

GEORGE B. SHAFFNER ET AL.

IBLA 76-533

Decided August 30, 1976

Appeals from separate decisions 1/ by the Dillon, Montana, District Office of the Bureau of Land Management, holding that appellants no longer have any claims to horses on the public lands as they failed to recover them during the periods specified in gathering authorizations, which have terminated.

Affirmed as modified.

1. Horses: The Wild Free-Roaming Horses and Burros Act of December 15, 1971

Where claimants have filed claims to horses on the public lands under Section 5 of the Wild Horses and Burros Act, 16 U.S.C. § 1335 (Supp. IV, 1974), and pursuant to the regulations in 43 CFR Subpart 4713, and failed to recover them within a reasonable period of time as provided in gathering authorizations issued by the Bureau of Land Management, the Department has no authority to nullify their claims of ownership; the regulations allow more than one authorization to be obtained; claimants in proper circumstances may obtain further authorizations; and upon compliance with legal requirements may gather and claim their horses and burros.

APPEARANCES: George B. Shaffner, pro se; L. C. Livestock Co., by Less Sanders, pro se; Don K. Shaffner, pro se; Harold L. Patterson, pro se.

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1/ The appellants and their case numbers are:

George B. Shaffner - MT-050-76-1

L. C. Livestock Co., by Less Sanders - MT-050-76-2

Don K. Shaffner - MT-050-76-3

Harold L. Patterson - MT-050-76-4.

## OPINION BY ADMINISTRATIVE JUDGE LEWIS

These appeals by four parties from the above-noted separate decisions of the Dillon, Montana, District Office, Bureau of Land Management, regarding their claims of ownership of branded and unbranded horses on the public lands are consolidated for decision purposes as they involve the same issues.

The claim affidavits were filed pursuant to The Wild Free-Roaming Horses and Burros Act of December 15, 1971, 16 U.S.C. §§ 1331-1340 (Supp. IV, 1974), held to be constitutional in Kleppe v. State of New Mexico, 44 U.S. L.W. 4878 (U.S. June 17, 1976), and the regulations in 43 CFR Part 4710. The Act authorized and directed the Secretaries of the Interior and Agriculture to protect and manage wild free-roaming horses and burros as components of the public lands, including lands in the national forests. It defined "wild free-roaming horses and burros" to mean all unbranded and unclaimed horses and burros on the public lands of the United States. It provided that a person claiming ownership of a horse or burro on the public lands shall be entitled to recover it only if recovery is permissible under the branding and estray laws of the State in which the animal is found.

The pertinent regulations in 43 CFR Subpart 4700 provide:

The gathering or rounding up of unbranded horses or burros on the public lands \* \* \* is prohibited without written authorization from the authorized officer. Also prohibited without written authorization from the authorized officer is the gathering or rounding up of unauthorized branded horses or burros where the branded animals are, or may become, intermingled with wild free-roaming horses or burros, or where the gathering or round up is likely to involve or affect wild free-roaming horses or burros.

43 CFR 4720.1(a).

Any person claiming ownership under state branding and estray laws of unbranded or branded horses or burros on public land where such animals are not authorized must present evidence of ownership to justify a roundup before permission will be granted to gather such animals. Claims of ownership, with supporting evidence, shall be submitted within 90 days of the effective date of these regulations. [2/] \* \* \* After

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2/ The regulations were effective upon publication in the Federal Register on August 15, 1973 (38 F.R. 22003).

such public notice as the authorized officer deems appropriate to inform interested parties, he may authorize the gathering or roundup. The authorized officer shall provide in the authorization that the gathering or roundup shall be consistent with the legislation which prohibits the use of aircraft or motor vehicles to capture unbranded horses or burros; shall establish in the authorization a reasonable period of time to allow the gathering of the claimed animals; and shall provide such other conditions in the authorization which he deems necessary to minimize stress on any associated wild free-roaming horses or burros and to protect other animals. [Emphasis added.]

43 CFR 4720.2(a).

After the animals have been gathered the authorized officer and the appropriate state or local official shall inspect each claimed animal in relation to the evidence of ownership previously presented by the claimant. The state or local official shall then make a written determination of ownership concerning each claimed animal pursuant to the state branding and estray laws and any agreement between the Bureau and the appropriate state or local authority. A copy of the written determination shall be provided to the authorized officer. No animal shall be removed from the gathering place until the claim of ownership has been proven to the satisfaction of the authorized officer.

43 CFR 4720.2(b).

The four claims here involved were filed within 90 days of August 15, 1973, as provided in the regulations. See n. 2. Harold L. Patterson claimed three branded mares and their colts in the Sweetwater Creek Area, and six branded and unbranded mares and their colts in the Rocky Hills Area. The claims of the remaining three parties were for animals in the Rocky Hills Area. George B. Shaffner claimed 25 branded and unbranded horses; Don K. Shaffner claimed "At least 10" branded and unbranded horses; and L. C. Livestock Co., by Less Sanders, claimed 12 horses plus offspring, branded and unbranded.

On December 26, 1973, the District Office sent to the four claimants notices acknowledging the acceptability of their claims, and informed them that authorization to gather and remove the animals claimed would be issued later. They were invited to attend

a meeting at the District Office on January 4, 1974, for the purpose of discussing the wild horse regulations, claiming schedules, restrictions, grazing fees and trespass charges.

Under date of January 4, 1974, the District Office sent the claimants authorizations to gather the claimed horses by using saddle horses and advised that the animals must be gathered from January 4 to June 30, 1974. The authorizations were made subject to several special stipulations, including a prohibition of the use of aircraft or motorized vehicles to round up the horses.

On January 7, 1976, the District Manager issued separate decisions on the four claims. In the one involving Harold L. Patterson's claim, the Manager stated:

You captured trespass horses in the Rocky Hills June 4, June 22, October 1, November 22, and December 30, 1974. All in all, you captured 45 trespass horses, 17 of which were claimed by you. Other claimants claimed the rest. You did not attempt gathering horses in the Sweetwater area.

According to the decisions in the remaining three cases, five of the 45 horses captured by Patterson were claimed by George Shaffner, three of them were claimed by Don Shaffner, and 14 of them were claimed by L. C. Livestock Co. All four of the decisions further stated:

We extended the time allowed for gathering the horses from June 30, 1974, to September 30, 1974, to December 31, 1974, to January 31, 1975, whereupon it was terminated.

Because your claim in the Rocky Hills [and Sweetwater, in the case of Patterson] expired, it is my decision you no longer have any claim to these animals.

All of the appellants, in effect, question the determination that they no longer have any claim to their remaining animals which were not included in the previous roundup of the 45 horses, contending that the horses still belong to them and that all that has terminated is the time allowed by the District Office to gather them off public lands. One of the appellants stressed the difficulty of gathering the horses by horseback in the rugged terrain of the Rocky Hills and urged the use of aircraft for the purpose. He stated that trying to remove the horses from this area by using saddle horses is extremely dangerous to humans and is inhumane and cruel to the saddle horses that are used.

The District Manager in the portion of the decisions quoted above concludes the appellants no longer have claim to the animals involved. It appears he means the appellants have forfeited all their right and title to the unrecovered animals by virtue of their failure to recover them during the periods set forth in the gathering authorizations and the successive extensions thereof. This conclusion is more or less borne out by one of the special stipulations in the gathering authorizations, which reads:

Any trespass animals not redeemed by the owners will be turned over to the appropriate State agency, or sold at public sale, or condemned and destroyed as provided for by the regulations of the Secretary of the Interior (43 CFR 9239.3).

Since the gathering authorizations terminated on January 31, 1975, appellants no longer have authority to gather or round up their claimed horses because such is forbidden, by regulation, without written authorization from the authorized officer. 43 CFR 4720.2(a). Although the gathering authorizations terminated on January 31, 1975, the Bureau of Land Management apparently allowed appellants additional time because the subject decisions were not issued until January 7, 1976, almost a year later, and in transmitting the appeals to this office on March 18, 1976, the Montana State Office stated "[i]n monitoring claimants gathering efforts lately, we concluded that they are no longer making a conscientious or concerted effort to remove claimed animals."

[1] We do not think that we can ignore the intent of Congress in passing the Act of December 15, 1971, supra, and hold that appellants have forfeited their claims of ownership of the animals by reason of their failure to locate them within the time granted for that purpose. Section 5 of the Act reads:

A person claiming ownership of a horse or burro on the public lands shall be entitled to recover it only if recovery is permissible under the branding and estray laws of the State in which the animal is found.

16 U.S.C. § 1335 (Supp. IV, 1974). The following language quoted from Senate Report No. 92-242 clearly shows the intent of Congress in enacting said Section 5 of the Act:

A basic difficulty in determining the intended scope of the legislation is the definition of what constitutes a wild free-roaming horse or burro. Particular concern was expressed by witnesses during the hearing that the original text of S. 1116 did not recognize claims by

individuals to ownership of unbranded horses or burros on public lands. Addition of the word "unclaimed" in the definition of a wild free-roaming horse or burro serves to give recognition to the valid claims of individuals. In addition, a new section 5 was added to emphasize the ability of an individual to prove ownership of a horse or burro on the public lands under the branding and estray laws of the State in which it is found. It is certainly not the intent of the committee that the right of an individual to claim and prove ownership under the respective State branding and estray laws be abrogated, nor that the appropriate State or local body should not exercise their statutory authority and obligation if the question of private ownership of a horse or burro should be raised. [Emphasis supplied.]

1971 U.S. CODE CONG. AND ADMIN. NEWS, p. 2151.

Therefore, in the absence of relinquishments by appellants of their claims to ownership of the horses, we do not think that the Department has the authority to nullify their claims of ownership in the face of the expressed intent of Congress, and we so hold. It is noted the regulations cited above do not state that a person claiming ownership of horses or burros on the public land may obtain only one authorization to gather said animals. Accordingly, we read these regulations to mean that more than one authorization may be obtained and we so hold. Therefore, we find that in proper circumstances the appellants may obtain further authorizations and upon compliance with the applicable legal requirements, they may gather and claim their horses and burros who are on the public lands. However, this is not to say that the State Director may not invoke the procedures set out in 43 CFR 9239.3-2(c) if he determines the conditions warrant such action. 3/

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3/ Subsection 3 of 43 CFR 9239.3-2(c) provides:

"(3) In any case where neither the owner of the trespassing livestock, or his representative, is known, or where conservation of the Federal range and of the forage thereon requires it, the district manager, when so authorized by written order of the State Director, may take steps to remove the trespassing livestock by such methods and by such means not inconsistent with legislation which prohibits the use of airborne or motor-driven vehicles in the gathering of horses or burros, as may be necessary, and to dispose of them by sale or otherwise within not less than five (5) days after public notice of his intention to make such disposition, subject to the right of any owner or registered lienholder of such trespassing livestock to redeem the livestock within such nondisposal period upon payment of:

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified herein.

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Anne Poindexter Lewis  
Administrative Judge

We concur:

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Martin Ritvo  
Administrative Judge

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Joseph W. Goss  
Administrative Judge

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fn. 3 (continued)

- "(i) The damage to the Federal range and other property of the United States.
- "(ii) The cost of such impoundment and removal.
- "(iii) The value of any forage consumed as determined in accordance with subparagraph (2) of this paragraph." [Emphasis added.]

